

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTUAN TERRELL WALDEN,

Defendant-Appellant.

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UNPUBLISHED

November 16, 2004

No. 248543

Washtenaw Circuit Court

LC No. 01-001809-FC

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316(1)(a), assault with intent do great bodily harm, MCL 750.84, possession of a firearm during the commission of a felony, MCL 750.227b, and conspiracy to commit first-degree premeditated murder, MCL 750.316(1)(a) and MCL 750.157a. The trial court sentenced him to concurrent terms of life in prison for the murder and conspiracy convictions and 38 to 120 months for the assault conviction, and a consecutive two-year sentence for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court erred in denying his motion to suppress his jailhouse confession because it was coerced and elicited in violation of his right to counsel. When reviewing a trial court's determination of voluntariness, this Court examines the entire record and makes an independent determination. *People v Shipley*, 256 Mich App 367, 372; 662 NW2d 856 (2003). We will affirm unless left with a definite and firm conviction that the trial court erred. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

In determining whether a defendant's statement qualifies as voluntary, we examine the following factors:

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused

was physically abused; and whether the suspect was threatened with abuse. [*People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).]

"The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness. The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *Id.*

Defendant's age, education, and intelligence level all support the trial court's conclusion that the recorded statements were voluntary. At the time of his arrest and interrogation, defendant was twenty-one years old, literate, and had the equivalent of a high school education. He did not appear to be of low intelligence, mentally retarded, or suffering from a mental illness. According to a detective who interviewed defendant on more than one occasion, defendant "seemed to be pretty intelligent" and "seemed to communicate pretty well."

Defendant's previous experience with the police also weighs in favor of the trial court's finding. When arrested for robbery at age eighteen, the police read him his *Miranda*<sup>1</sup> rights, but defendant refused to waive them. Thus, contrary to his assertion on appeal, defendant did have some prior experience with the police, had been read the *Miranda* warnings before, and knew that he could refuse to waive his rights.

The nature of the questioning and the length of defendant's detention before the interrogations also support a finding of voluntariness. Detectives first interviewed defendant approximately four hours after his arrest. The second and third interviews took place within thirty-two hours of the first. At the first 2-½ hour-long interview, detectives gave defendant a fifteen-minute break during which they supplied him with a cigarette and something to drink. Although he requested a second cigarette, he never asked them to stop questioning him or stated that he was tired. Similarly, the length of questioning in the second and third interviews does not support a finding that the statements were involuntary. The second interview, held on the day after the first, commenced at 11:19 p.m. and concluded at 11:50 p.m., less than an hour later. The third interview was held from 12:08 until 12:24 a.m., after defendant indicated he wished to make an additional statement.

Several additional factors also provide support for the trial court's ruling. Before each interview, the detectives read defendant the *Miranda* warnings and he agreed to waive his rights. Defendant did not appear intoxicated or physically injured at any of the interviews and he was not deprived of food, sleep, or telephone access during this time. Furthermore, defendant admits that the detectives did not physically threaten him or promise leniency.

Nevertheless, defendant asserts that his confessions were the product of psychological coercion because detectives repeatedly referred to his desire to see his child and suggested that he would not see her if he did not confess. Both this Court and the United States Supreme Court have set aside criminal convictions based on psychological coercion where authorities threatened to have the defendants' children taken away if they failed to cooperate. See *Lynumn v Illinois*,

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 11; 17 L Ed 2d 121 (1966).

372 US 528, 534; 83 S Ct 917; 9 L Ed 2d 922 (1963); *People v Richter*, 54 Mich App 598, 601-603; 221 NW2d 429 (1974). But in the instant case, unlike *Lynnum* and *Richter*, the police never removed or threatened to remove defendant's daughter from his custody. Because defendant was neither living with nor caring for her at the time of his arrest, the welfare and custodial environment of defendant's daughter were not placed in jeopardy by the detectives' references to her during the interrogations. Consequently, defendant's confession did not result from psychological coercion.

Likewise, contrary to defendant's assertion on appeal, detective Blackwell's statement to defendant that defendant should tell Blackwell the truth because detectives, like ministers, work for God, did not imply that defendant would "face no consequences" if he confessed. Unlike *People v Wyngaard*, 462 Mich 659, 667-668; 614 NW2d 143 (2000), in which the defendant made an incriminating statement after investigators promised it would only be used for impeachment and rebuttal purposes, the detectives never promised defendant that they would not use his confession as evidence in court. Because the statement "I work for God" does not imply that defendant's confession would not be used against him, the presentation of his confession at trial did not violate his right to due process.

Defendant further contends that his confession was not voluntary because he requested an attorney before Detective Robbins read him his *Miranda* rights, and, therefore, pursuant to *Fare v Michael C*, 442 US 707, 719; 99 S Ct 2560; 61 L Ed 2d 197 (1979), all questioning should have ceased. Although defendant testified at his *Walker* hearing that he asked for an attorney before Robbins read him his rights, the detective testified that he made no such request. The trial court, faced with a credibility determination, concluded that defendant's confession was voluntary. This Court defers to a trial court's assessment of the credibility of witnesses when determining the voluntariness of a confession and its findings will not be reversed unless they are clearly erroneous. *Sexton, supra*, 752. Because the resolution of this question depended on the credibility of the witnesses and there is no indication that the court's findings were clearly erroneous, we defer to its determination.

Neither review of the factors listed in *Cipriano, supra*, 334, nor defendant's arguments regarding coercion leave us with a definite and firm conviction that the trial court erred in concluding defendant's statements were voluntary. Consequently, defendant's confessions were properly admitted at trial.

Defendant next argues that there was insufficient evidence to support his conviction of first-degree premeditated murder. A claim that the prosecution presented insufficient evidence to sustain a conviction is reviewed de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). We examine the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992) mod 441 Mich 1201 (1992). The scope of review remains the same whether the evidence presented is direct or circumstantial. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and the reasonable inferences arising from it may constitute sufficient evidence of the elements of a crime. *People v Bulmer*, 256 Mich App 33, 37; 662 NW2d 117 (2003).

Under MCL 750.316(1)(a), the elements of first-degree premeditated murder are that the defendant killed the victim and that the killing was “willful, deliberate, and premeditated.” *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). To establish premeditation and deliberation, the prosecution must show the existence of some time between the initial homicidal intent and the ultimate action. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). The interval should be long enough to afford a reasonable person time to take a “second look.” *Id.* For example, this Court has held that proof that a defendant shot a sleeping victim in the head at close range constitutes sufficient evidence of premeditation to support a first-degree murder conviction. *Bowman, supra*, 152.

Defendant contends that the prosecution failed to present sufficient evidence to establish that he acted with premeditation and deliberation. But as in *Bowman*, it presented evidence showing that defendant shot the victim, Howard Williams, at close range while he slept. The jury heard a recording of defendant’s confession in which he admitted shooting Williams when he was asleep in his bed. It also heard the testimony of Lazarus Perry, who stated that defendant told him he shot one of Perry’s men in his sleep because he wanted money. And the medical examiner who performed the autopsy testified that Williams was shot in the back of the head from less than five feet away. Based on this testimony, a rational jury could have found that defendant acted with premeditation and deliberation. Sufficient evidence exists to establish beyond a reasonable doubt that defendant committed first-degree murder and we affirm his conviction.

Defendant further argues that the prosecution presented insufficient evidence to sustain his conspiracy conviction in that it failed to establish that he and James King agreed in advance to kill Williams. A criminal conspiracy is an “agreement, expressed or implied, between two or more persons to commit an unlawful or criminal act.” *People v Weathersby*, 204 Mich App 98, 111; 514 NW2d 493(1994). It is critical to establish that two or more individuals specifically intended to combine to pursue the criminal objective of their agreement because the “gist of the offense” lies in the “unlawful agreement.” *People v Justice (After Remand)*, 454 Mich 334, 345-346; 562 NW2d 652 (1997), internal citations omitted. But direct proof of a conspiracy is not required. *Id.*, 347. Rather, proof “may be derived from the circumstances, acts and conduct of the parties.” *Id.*

Although the prosecutor did not present any direct evidence that defendant and King agreed to murder Williams, sufficient circumstantial evidence existed for a rational jury to find that defendant and King conspired to commit first-degree murder. Defendant admitted that he agreed to accompany King to the apartment where Williams and the second victim, Kenneth Cooksey, were staying so that King could collect some money. He carried a gun and testified that he knew beforehand that there could be trouble. After they arrived at the apartment, King and Cooksey went to the store together, but defendant remained behind. While they were gone, defendant went into Williams’ bedroom and shot him as he slept. Cooksey testified that when he and King returned to the apartment, defendant walked in front of him. King then stabbed Cooksey several times from behind and defendant shot him twice. Furthermore, after the attack on Cooksey, the evidence established that defendant and King took a play station and marijuana from the apartment and a set of tires from Cooksey’s vehicle. Based on their concerted actions before and after Williams’ death and the fact that they simultaneously attacked Cooksey when he returned to the apartment, the trier of fact could infer that defendant acted pursuant to an

agreement with King. The prosecution presented sufficient circumstantial evidence for a rational jury to find beyond a reasonable doubt that defendant conspired to commit first-degree murder. Therefore, we affirm his conviction.

Affirmed.

/s/ Jessica R. Cooper  
/s/ E. Thomas Fitzgerald  
/s/ Joel P. Hoekstra